GANASAN MARIMUTHU

v.

PUBLIC SERVICES COMMISSION & ANOR

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
AHMAD FAIRUZ JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: W-01-128-1995]
15 SEPTEMBER 1998

ADMINISTRATIVE LAW: *Dismissal - Dismissal of public officer - Opportunity to be orally heard - Dismissal pursuant to General Order 26(4) of Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980 - Disciplinary authority considering written representation but refusing legal representation - Whether a breach of rules of natural justice - Whether dismissal null and void - Whether opportunity to make written representation sufficient to meet demands of fairness - Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980, General Orders 4(2), 23, 26 - Federal Constitution arts. 132(1), 135(2)*

The appellant, a technician attached to the Telekoms department, was dismissed from public service following charges that he had made unauthorised telephone calls to India and had thereby conducted himself in a way that contravened General Order 4(2) of the Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980 ('the General Orders 1980'). It was not in dispute that prior to his dismissal the appellant was given the opportunity of making a written representation to the disciplinary authority, and that it was upon considering that representation that the disciplinary authority had decided to invoke General Order 26(4) of the General Orders 1980 and dismiss the appellant. The facts also showed, however, that the disciplinary authority, in considering the written representation, had not acceded to the appellant's request for legal representation. The appellant argued that the disciplinary authority, in refusing his said request, had acted in breach of the rules of natural justice, and so applied for a declaration that his dismissal was null and void and of no effect. The learned judge dismissed the application whereupon the appellant appealed. The issue that arose was whether, bearing in mind particularly the provisions of General Order 26 of the General Orders 1980, the first respondent could be said to have contravened the rules of natural justice when it did not afford the appellant the opportunity to engage a solicitor herein.

Held:
Per NH Chan JCA

[1] General Order 26(4) of the General Orders 1980 makes no provision for the appellant or his legal representative to appear before any person or body. It is only when the disciplinary authority deems it necessary to appoint, and does appoint a committee of inquiry under General Order 26(5), that the appellant, under General Order 26(6), will have the opportunity of giving oral testimony to exulpate himself. It is only then that the committee has a discretion, under General Order 26(8), whether to allow the appellant to be represented either by an officer of the public service or an advocate and solicitor

[2] In the present case the matter did not proceed to the committee of inquiry level but had stopped at the disciplinary authority stage where General Order 26(4) is applicable. That being the case, there is no question of the appellant being entitled to an oral hearing or to be represented by a lawyer.

[3] It is also clear that, at the disciplinary authority stage, a fair hearing does not mean that there must be an opportunity to be heard orally. In any event, the opportunity afforded to the appellant to make the written representation herein is sufficient to meet the demands of fairness.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, seorang juruteknik dengan jabatan Telekom, telah dipecat dari jawatan awamnya berikutan tuduhan bahawa beliau telah membuat panggilan-panggilan telefon tanpa kebenaran ke India dan dengan itu telah berkelakuan dengan cara yang menyanggah Perintah Am 4 (2) Perintah-perintah Am (Kelakuan dan Tatatertib) (Bab "D") Pegawai-pegawai Awam 1980 (Perintah-perintah Am 1980). Tidak dinafikan bahawa sebelum pemecatannya perayu telah diberi peluang untuk membuat representasi bertulis kepada pihakberkuasa tatatertib, dan bahawa pihakberkuasa tatatertib hanya memutuskan untuk memecat perayu di bawah Perintah Am 26(4) Perintah-perintah Am 1980 setelah menimbang representasi tersebut. Fakta bagaimanapun juga menunjukkan bahawa pihakberkuasa tatatertib, dalam menimbang representasi bertulis perayu, telah tidak memenuhi permintaan untuk diwakili oleh seorang peguam. Perayu berhujah bahawa pihakberkuasa tatatertib, dalam menolak permintaannya tersebut, telah bertindak dengan cara yang bertentangan dengan prinsip keadilan asasi, dan dengan itu memohon perisytiharan bahawa pemecatannya adalah tak sah dan batal serta tidak berkesan. Hakim yang bijaksana menolak

permohonan perayu dan perayu merayu. Persoalan yang berbangkit ialah samada, mengambilkira peruntukan-peruntukan Perintah Am 26 Perintah-perintah Am 1980, responden pertama boleh dianggap sebagai telah menyanggah prinsip-prinsip keadilan asasi bilamana ia gagal memberi peluang kepada perayu untuk mendapatkan khidmat seorang peguam untuk membelanya di sini.

Diputuskan:
Oleh NH Chan HMR

[1] Perintah Am 26(4) Perintah-perintah Am 1980 tidak mempunyai peruntukan yang membolehkan perayu atau peguamnya hadir di hadapan mana-mana orang atau jawatankuasa. Ianya hanya setelah pihakberkuasa disiplin merasa perlu untuk melantik, dan melantik suatu jawatankuasa penyiasatan di bawah Perintah Am 26(5), maka perayu, di bawah Perintah Am 26(6), mempunyai peluang untuk memberi keterangan lisan untuk membebaskan dirinya. Hanya pada ketika itu jawatankuasa mempunyai budibicara, di bawah Perintah Am 26(8), samada untuk membenarkan perayu diwakili oleh seorang peguam ataupun oleh seorang pegawai dari perkhidmatan awam.

[2] Dalam kes semasa, halperkara yang timbul tidak sampai ke tahap jawatankuasa penyiasatan tetapi telah berhenti diperingkat pihakberkuasa tatatertib di mana Perintah Am 26(4) terpakai. Dengan hal yang demikian, tidak timbul persoalan samada perayu berhak untuk didengar secara liasan atau diwakili oleh seorang peguam.

[3] Ianya juga jelas bahawa, diperingkat pihakberkuasa tatatertib, suatu pendengaran yang adil tidak bermakna wujudnya peluang untuk didengar secara lisan. Walau apa pun, peluang yang diberi kepada perayu untuk membuat representasi bertulis di sini sudah mencukupi untuk memenuhi kehendak-kehendak keadilan.

[Rayuan ditolak.]

Cases referred to:
Doresamy v. Public Services Commission [1971] 2 MLJ 127 ***(dist)***
Ghazi v. Mohd Haniff, Ketua Polis Negara, Malaysia [1994] 2 CLJ 333 ***(foll)***
Hajah Halimatussaadiah v. Public Services Commission [1994] 3 CLJ 532 ***(foll)***
Local Government Board v. Arlidge [1915] AC 120 ***(foll)***
Najar Singh v. Government of Malaysia [1976] 1 MLJ 203 ***(foll)***

Legislation referred to:
Federal Constitution, arts. 132(1)(c), 135(2)
Public Officers (Conduct & Discipline) General Orders 1980, General Orders 23, 26(2), (4), (5), (6), (7), (8), (11)
Public Officers (Conduct & Discipline) General Orders Regulations 1969, reg. 27

For the appellant - Karpal Singh; M/s Karpal Singh & Co
For the respondent - Al-Baishah Hj Abd Manan SFC

Reported by WA Sharif

JUDGMENT

NH Chan JCA:

The plaintiff (appellant) joined the Telekoms department as a junior technician in 1964. In 1978 he was promoted to technician (special grade). At the material time, he was employed by the Government of Malaysia (the second defendant) in the general public service of the Federation as defined in art. 132(1)(c) of the Federal Constitution. As a member of the public service, General Order 23 (of the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders, 1980) which follows art. 135(2) of the Constitution was applicable to him. These provisions (ie, General Order 23 and art. 135(2)) require that before he can be dismissed he must be given an opportunity of being heard.

The relevant part of his statement of claim reads:

> 5. On the 16th July 1986, the First Defendant issued, or caused to be issued, a written notice to the Plaintiff, under Order 26 of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) 1980, hereinafter referred to as the General Orders, and requesting the Plaintiff to show cause why he should not be dismissed for committing three offences on the charge enumerated therein.
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> 6. ...
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> 7. By letter dated the 24th day of November 1986, the First Defendant wrongfully and in breach of the various provisions of the Federal Constitution the General Orders and the rule of Natural Justice terminated the said employment and wrongfully dismissed the Plaintiff therefrom and refused to employ him any longer.

And he claims a declaration that his dismissal from government service was invalid and void.

As stated in para. 5 of the statement of claim, the plaintiff was served with the letter (which was dated 16 July 1986) informing him of the two grounds (actually, these were the only two grounds, not three as stated in the statement of claim) on which it was proposed to dismiss him from the public service and giving him twenty days from the receipt of the letter to state in writing a representation containing grounds upon which he relies to exculpate himself. The two grounds of complaint read:

Pertuduhan Pertama:

Bahawa tuan, Ganasan a/l Marimuthu yang bertugas sebagai Juruteknik (Telekom), Tingkatan Kanan, Pejabat Telekom Tempatan Wilayah Timur I, Ibu Sawat Telekom, Bintang, Kuala Lumpur, pada 19-2-85, dengan bantuan Encik Windsor Lawrence Hewa yang bertugas sebagai Pekerja IMG Kumpulan III Jenis F telah membuat panggilan telefon ke Madras, India, nombor MAD 9144 25668 melalui meja ujian di Ibu Sawat Telekom, Bintang, Kuala Lumpur dan mengenakan/memasukkan bayaran sejumlah $26.25 tersebut ke bill telefon nombor 484975 kepunyaan Wah Leong Sdn. Bhd. Batu 3¼ Jalan Sungai Besi, Kuala Lumpur. Dengan perbuatan tuan itu, tuan telah melakukan satu kesalahan yang bertentangan dengan Perintah Am 4(2)(a), 4(2)(d), 4(2)(f) dan 4(2)(g), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

Pertuduhan Kedua:

Bahawa tuan, Ganasan a/l Marimuthu yang bertugas sebagai Juruteknik (Telekom), Tingkatan Kanan, Pejabat Telekom Tempatan Wilayah Timur I, Ibu Sawat Telekom, Bintang, Kuala Lumpur, pada 25-3-85 dengan bantuan Encik Windor Lawrence Hewa yang bertugas sebagai pekerja IMG Kumpulan III Jenis F telah membuat dua (2) panggilan telefon ke Madras, India nombor telefon MAD 9144 25688 melalui meja ujian di Ibu Sawat Telekom, Bintang, Kuala Lumpur dan mengenakan/memasukkan bayaran sejumlah $5.25 dan $23.25 tersebut ke bill telefon nombor 422737 kepunyaan C.P. Ng & Co. Sdn. Bhd. 161, Jalan Maharajalela (Jalan Birch), Kuala Lumpur. Dengan perbuatan tuan itu, tuan telah melakukan satu kesalahan yang bertentangan dengan Perintah Am 4(2)(a), 4(2)(d), 4(2)(f) dan 4(2)(g), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib (Bab 'D'), 1980.

The letter of 16 July 1986 was issued pursuant to General Order 26(2) of the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980.

General Order 26, which has the force of law, deals with the procedure to be followed in cases where dismissal or reduction in rank may be involved. So far as material it reads:

26 (1) Where it is represented to, or is found by, the Appropriate Disciplinary Authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the provisions of the following paragraphs shall apply.

(2) The Appropriate Disciplinary Authority shall, after considering all the available information in its possession [if of the opinion] that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself.

(3) ...

(4) If the officer does not furnish any representation within the specified time, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

The plaintiff received the letter on 5 August 1986 and he replied to it by his letter dated 21 August 1986 in which he denied both the charges and stated that he did not make the alleged telephone calls to Madras, India nor did he direct any member of his staff to do so. But he failed to present a case of substance to the deciding body which could have exculpated him (General Order 26(4)) or which would be enough for the disciplinary authority to call for further clarification and appoint a committee of inquiry in the case against him (General Order 26(5)). Two telephone subscribers had complained to Telecoms that they have been billed for overseas calls made from their telephone numbers which they never made or were impossible for them to have made as they have no commercial or other connections with people abroad. But he made no attempt to show that at the time the calls were made he was not anywhere near to the complainants' telephones or in close proximity to a facility where he could have access to or tampered with the telephone lines of the complainant subscribers. As a telephone technician he could have given some sort of credible explanation, if he had one. That was the very least that was expected of him. Instead of directing his attention to show that he could not have done it, he merely denied that he had made those telephone calls to the telephone number MAD 9144 24688 in Madras, India. According to him, the Indian Telecoms had informed him that it was impossible for them to trace the name of the person who had made those calls from outside of India to a subscriber in India. Of course, they would not be able to do that – it does not take an Einstein to figure that out! He contended

that since the Indian Telecoms could not name the caller, therefore he could not be the one. But that is to beg the question. The point was not whether the Indian Telecoms could identify the caller. It was for him to show (as he was asked to show cause) that he could not be the person responsible for the calls that were made through the use of the telephone numbers of the complainants. For this, there was no explanation at all coming from him. General Order 26(2) only shifts the onus on to him to exculpate himself by a representation in writing, which can be adequately met by showing that he was not the person responsible. This does not mean that he must show exactly how the tampering of the phone lines was done. It is sufficient if he satisfies the disciplinary authority (in his written representations) that he did not do it. He also asked for permission to engage a solicitor. However, there was no response to this request. Instead, they found that the representations he made in writing failed to exculpate him to the satisfaction of the disciplinary authority, and he was dismissed on 24 November 1986. The action to dismiss him was taken under General Order 26(4).

General Order 26(5) provides that after an accused officer has made his representations in writing and the disciplinary authority considers that the case against the officer requires further clarification, it may appoint a committee of inquiry. General Order 26(6) provides that the officer has to be given notice of the day on which the question of his dismissal or reduction in rank will come before the committee and told that he will be allowed and, if the committee so determined, required to appear before it and exculpate himself. He has to be given the opportunity of being present when witnesses are examined and of putting questions to them (General Order 26(7)). The committee may permit the government or the officer to be represented by an officer of the public service or, in exceptional cases, by an advocate and solicitor (General Order 26(8)). The committee has to report to the disciplinary authority which will act on its report (General Order 26(11)).

Surprisingly, although the statement of claim was scanty and grossly inadequate, the action went to trial. There was no indication at all in the statement of claim that the point would be taken that the plaintiff was denied legal representation. There was only a general allegation in para. 7 of the statement of claim that the first defendant had acted in breach of natural justice in the dismissal of the plaintiff. But at the trial, the plaintiff contended that the decision to dismiss him was null and void and of no effect on the ground that he had requested and been denied legal representation in relation to the charges against him. The judge below dismissed his action, and he appeals to this court.

I refer to *Najar Singh v. Government of Malaysia* [1976] 1 MLJ 203, PC where Viscount Dilhorne who gave the judgment of the Board (consisting of Lord Wilberforce, Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Hailsham of St Marylebone and Lord Fraser of Tullybelton) stated the facts thus, 203:

> ... the Inspector General of Police sent him a letter dated July 5, 1971 asking him to show cause why he should not be dismissed from the Police Force. The appellant sent a reply forthwith. Their Lordships are ignorant of the reasons why the Inspector General wrote to him and of the contents of his reply as they were not disclosed in the Courts.
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> On August 18, 1971 the appellant was dismissed from the Police Force and just under a year later, on August 16, 1972, he started these proceedings in which he sought a declaration that his dismissal from the Police Force "purported to be effected by Police Services Commission" was void, and an order for payment to him of the pay, allowances and emoluments of a Sergeant Major from August 18, 1971.
>
> Abdul Hamid J dismissed his claim. He then appealed to the Federal Court of Malaysia and he now appeals with leave of that court from their dismissal of his appeal.
>
> The grounds on which he appeals may be summarised as follows:
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> (1) ...
>
> (2) contrary to natural justice and Regulation 27 of the Chapter D Regulations 1969, he was not afforded a reasonable opportunity of being heard before he was dismissed.

The Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations 1969 so far as material read as follows:

> 27. In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard.
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> ...
>
> 30(1). Where it is represented to, or is found by, the appropriate Disciplinary Authority or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the following provisions shall apply.

(2). The Disciplinary Authority shall after considering all the available information in its possession [if of the opinion] that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing [within] a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

...

(4). If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

Viscount Dilhorne in giving the judgment of the Board said, at 205:

... Regulation 27 has to be read with regulation 30 and that makes no provision for an oral hearing if the officer fails to make representations in writing or the representations he makes in writing do not exculpate him. It is only if a Committee of Inquiry is appointed that he will be given the opportunity of giving oral evidence.

In their Lordships' opinion regulation 27 is not to be interpreted as imposing an obligation to hear an officer orally.

In a number of cases the argument has been put forward that the omission to hear a party orally was contrary to natural justice. In *Local Government Board v. Arlidge* [1915] AC 120 evidence had been given on behalf of Mr. Arlidge at a public inquiry but he claimed to be entitled to be heard orally by the Local Government Board to which he was appealing before they decided his appeal. The House decided that he was not so entitled, Viscount Haldane L.C. saying at p. 134:

> I do not think the Board was bound to hear the respondent [Arlidge] orally, provided it gave him the opportunities he actually had.

In *The King v. Housing Appeal Tribunal* [1920] 3 KB 334 the appeal tribunal, having received the appellant's notice of appeal and the local authority's statement in reply, dismissed the appeal. It was held that under the rules of procedure applicable, the appeal tribunal might dispense with an oral hearing but that they were bound to give the appellant a hearing in the sense of an opportunity of putting his case, Sankey J, as he then was, saying at p. 346:

> Now a hearing in my view need not be an oral one, it may be on written representations.

and he concluded:

> ... What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though as the content of his representations was not disclosed, their Lordships are unable to say whether he presented a case of substance.
>
> In the circumstances the plea by the appellant that there was a denial of natural justice must in their Lordships' opinion be rejected.

Just as in the instant case, it was only after the representations the appellant had made in writing failed to exculpate him that he was dismissed (General Order 26(4)). General Order 26(4) makes no provision for an oral hearing if the officer fails to make representations in writing or the representations he makes in writing do not exculpate him. Equally, it makes no provision for him or his legal representative to appear before any person or body at that stage which is only for stating his case in a written representation (for which the appellant was given a full opportunity to do so (General Order 26(2)) and indeed he had already availed himself of that opportunity), and if this fails to exculpate him to the satisfaction of the appropriate disciplinary authority, that authority will proceed to consider and decide on the dismissal or reduction in rank of the officer.

There is at that stage (General Order 26(2) stage), of course, no impediment for a lawyer to draw up the written representations for the officer or to advise him on how to put together the representations in writing. Indeed, the Supreme Court felt that the written representations in *Ghazi v. Mohd Hanniff* have been written with the benefit of the advice of a lawyer ([1994] 2 MLJ 114, 130).

It is only if a committee of inquiry is appointed because the disciplinary authority requires further clarification in the case against the officer (General Order 26(5)), that he will have the opportunity of giving oral testimony to exculpate himself (General Order 26(6)). It is only then that the committee has discretion to allow him to be represented by an officer of the public service or, in exceptional cases, by an advocate and solicitor (General Order 26(8)).

The following remarks from the judgment of Lord Shaw of Dunfermline in *Local Government Board v. Arlidge* [1915] AC 120, 138 (which spoke of the means to act justly, and to reach just ends by just means in relation to natural justice in administrative law) are appropriate to the procedure in General Order 26:

> ... if a statute prescribes the means it [i.e. the deciding body] must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a unsurpation. And the assumption that the methods of natural justice are *ex necessitate* those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure ...

In *Ghazi v. Mohd Haniff, Ketua Polis Negara, Malaysia* [1994] 2 MLJ 114, the Supreme Court (Jemuri Serjan CJ (Borneo), Edgar Joseph Jr and Mohamed Dzaiddin SCJJ) held, and I read from the headnote, at 115:

> (2) The respondent had complied with the provisions of GO 23 and GO 26 of the Police *(sic)* [Public] Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 ('the 1980 General Orders'). Following the procedure set out in GO 26, the respondent had correctly sent the appellant a show cause letter following closely the provisions of paras 1, 2 and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which was accordingly furnished in great detail. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. Under para 4 *(sic)* [5] of GO 26, only if the respondent considers that the case against the appellant requires further clarification is he obliged to appoint a committee of inquiry. In such an event, both parties may be legally represented. Under the circumstances, the procedure adopted by the respondent did not in any way involve prejudice to the appellant.

This is what the chief justice (Borneo) in giving the judgment of the court said, at 130:

> There was here no question of the respondent failing to comply with the provisions of GO 23 and GO 26. Besides, the appellant did not complain that GO 26 was not complied with nor that the provision of this General Order is void for some well-established principles of constitutional or administrative law. Following the procedure set out in GO 26 the respondent had correctly sent him a show cause letter dated 1 March 1990 following closely the provisions of paras 1, 2, and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which also was accordingly furnished in great detail, apparently, after having had the benefit of the advice of a lawyer. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. Under para 4 *(sic)* [5] of the said General Order, only if the respondent considers that the case against the appellant requires further clarification that he is obliged to appoint a committee of inquiry. In such an event, both parties may be legally represented. Under the circumstances, the procedure adopted by the respondent, in our view, did not in any way involve prejudice to the appellant.

See also *Hajah Halimatussaadiah v. Public Services Commission* [1994] 3 MLJ 61 where the Supreme Court held, and I read from the headnote, at 62:

> (1) The procedure adopted by the disciplinary board and the PSC had complied strictly with orders 24 and 26 of GO 'D'. The disciplinary board had decided that proceedings for dismissal should be taken against the appellant and referred the matter to the PSC, which then wrote a show cause letter to her. The appellant was given every opportunity to exculpate herself and, after due consideration of her representations, the PSC decided to dismiss her. Therefore, the appellant failed on the first ground.

This is what Dzaiddin SCJ in giving the judgment of the court (Abdul Hamid Omar LP, Edgar Joseph Jr and Mohamed Dzaiddin SCJJ) said, at 69:

> The procedure adopted by the chairman of the disciplinary board and the PSC, in our view, followed strictly orders 24 and 26 of GO 'D'. The appellant was given every opportunity to exculpate herself. It is clear from the evidence that the chairman of the disciplinary board, upon receipt of the report from the State Legal Adviser, Perak, of the appellant's refusal to comply with the said service circular, decided under order 24 of GO 'D' that proceedings for dismissal should be taken against her. The chairman then referred the matter to the PSC for further action. The PSC accordingly wrote to the appellant a show cause letter which included a charge as to why she should not be dismissed from public service. The appellant then gave a reply in the form of an exculpatory representation, giving her reasons why she would continue to wear the purdah. Order 26(4) states that if the officer furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. After due consideration, the PSC decided on 10 November 1986 to dismiss her from service. The letter of dismissal was sent to her on 16 December 1986. In the result, the appellant's first ground must fail.

In other words, the opportunity to make written representations has been held sufficient to meet the demands of fairness. The opportunity to make representations in writing in a case such as the present has been held to be all that fairness requires (*Najar Singh v. Government of Malaysia* (Privy Council), *Ghazi v. Mohd Haniff, Ketua Polis Negara* (Supreme Court) and *Halimatussaadiah v. Public Services Commission* (Supreme Court)).

The Privy Council as well as the Supreme Court have held that in employing the procedure prescribed in General Order 26 and the former reg. 30 of the General Orders the requirements of fairness have been satisfied by an opportunity to make written representations to the deciding body. In all such cases, it has been held time and again by the highest courts in the land that written representations will suffice and that a fair hearing does not mean that there must be an opportunity to be heard orally by the officer in person or

by his lawyer at the disciplinary authority stage. It is only at the committee of inquiry stage that an oral hearing, and with it the desirability or otherwise of legal representation, can be considered. The appeal is dismissed with costs.

The appellant has placed much reliance on the High Court case of *Doresamy v. Public Services Commission* [1971] 2 MLJ 127 as an authority to be considered by this court in the present case. We think this is misplaced. *Doresamy* is as different as chalk from cheese from the facts and situation of the present case. The opening remarks in that case by Raja Azlan Shah J speak for themselves. He said, at 128:

> The applicant was given an opportunity to exculpate himself. His solicitors made representations on his behalf and the board, after due consideration, dismissed the applicant from his service. He was informed of his right of appeal against such decision to the Public Services Disciplinary (Division IV and Industrial and Manual Group) (Dismissal) Appeal Board. The applicant appealed to the Appeal Board in writing through his solicitors. The Chairman of the Disciplinary Board who was responsible for the preparation of the appeal record and forwarding the same to the Appeal Board noticed that the appeal was made by the applicant's solicitors. So he wrote a letter to the applicant in the following terms:
>
> > I have the honour to ... inform you that your appeal against your dismissal from the service cannot be considered by the Public Services Commission as the appeal was made through your solicitor and not by you personally in writing as provided by regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967. In view of the above, your dismissal from the service has now become absolute ...

As can be seen from the above, *Doresamy* was not a case which was at the making of representations in writing (ie, disciplinary authority) stage but it was a case which was at the appeal stage where the procedure was quite different. All of these things have already been discussed and explained in this judgment, except that in the present case, there was no appellate stage but instead there is (if appointed by the disciplinary authority) a committee of inquiry stage (General Order 26(5)). That stage, however, could only be reached if the disciplinary authority considers that the case against the accused officer requires further clarification. There, there are provisions for an oral hearing (General Order 26(6) and for the officer to be present and represented by a fellow officer or (in exceptional cases) by a lawyer (General Order 26(8)). But, in the present case the proceedings stopped at the stage where General Order 26(4) is applicable and that makes no provision for an oral hearing or for the officer or his agent or lawyer to appear before the deciding body if he fails to make representations in writing or the representations he makes in writing do not exculpate him. Here, in the present case, the matter ended for

the appellant by his dismissal. It did not proceed further to the committee of inquiry level because the disciplinary authority did not require further clarification in the case against the appellant. It is only if a committee of inquiry is appointed that he will have the opportunity of giving oral evidence to exculpate himself (General Order 26(6)) and the committee will have the discretion to permit him to be represented by an officer of the public service or, in exceptional cases, by a lawyer (General Order 26(8)).